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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**DOUGLAS J. WOOD,**

**Petitioner,**

**vs.**

**CACHE VALLEY CHEESE and  
WORKERS COMPENSATION FUND;  
WESLO, INC. and ARGONAUT  
INSURANCE COMPANY; and  
EMPLOYERS' REINSURANCE FUND,**

**Respondents.**

**ORDER ON MOTION  
FOR REVIEW**

**Case No. 04-0930**

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Cache Valley Cheese and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Cache Valley") and Weslo, Inc. and its insurance carrier, Argonaut Insurance Company, (referred to jointly as "Weslo") request review of Administrative Law Judge La Jeunesse's denial of their request that the Employers' Reinsurance Fund ("ERF") reimburse a portion of the medical benefits WCF has paid for Douglas J. Wood under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Wood injured his back in 1980 while employed by Cache Valley. In 1983, Judge Sumsion ordered Cache Valley and ERF to share equally the disability and medical benefits due Mr. Wood for that injury. As a matter of convenience, Judge Sumsion required Cache Valley to pay the benefits in question and ERF (then known as the Second Injury Fund) to reimburse Cache Valley for one-half of the amount so paid.

On January 10, 1990, Mr. Wood reinjured his back, this time while working for Weslo. Cache Valley argued that Mr. Wood's on-going back problems were caused by the Weslo accident and that Weslo should be liable for Mr. Wood's future benefits. Weslo took the contrary view, arguing that Mr. Wood's back problems still were related to his original accident at Cache Valley and that Cache Valley should pay his future benefits. Ultimately, Cache Valley, Weslo and Mr. Wood reached a compromise settlement that, in effect, attributed Mr. Wood's continuing back problems equally to both the Cache Valley and Weslo accidents. Cache Valley and Weslo therefore agreed to each pay one-half of Mr. Wood's future medical expenses. This agreement was

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incorporated in Judge Church's 1991 order, with Cache Valley to continue paying all Mr. Wood's medical expenses in the first instance, subject to Weslo's obligation to reimburse Cache Valley for one-half of those expenses.

In 2003, Mr. Wood sought additional benefits for his injuries. The parties, including all three respondents--Cache Valley, Weslo and ERF--settled this matter by stipulating, in part, that Mr. Wood's medical expenses be paid by the respondents according to the terms of the 1983 and 1991 orders. Judge La Jeunesse approved this settlement on February 20, 2004.

Finally, in October 2004, Cache Valley commenced this proceeding to compel Weslo and the ERF to reimburse Cache Valley for their respective shares of Mr. Wood's medical expenses. Weslo responded to Cache Valley's claim by conceding liability for a part of Mr. Wood's medical expenses. The ERF denied any liability for those expenses.

Judge La Jeunesse's decision in this matter concluded that Judge Sumsion's 1983 order, which had divided liability between Cache Valley and ERF for Mr. Wood's 1980 injury, had been supplanted by Judge Church's 1991 order. On that basis, Judge La Jeunesse concluded that ERF had no further liability for Mr. Wood's medical expenses. Cache Valley and Weslo each requested review of Judge La Jeunesse's decision. Although their arguments differ in some details, they both contend that the ERF remains obligated to reimburse Cache Valley for part of Mr. Wood's medical expenses.

**DISCUSSION AND CONCLUSIONS OF LAW**

As discussed above, Mr. Wood has claimed workers' compensation for his back injuries on three different occasions and the Commission's ALJs have issued three different orders regarding those claims, in 1984, 1991, and 2004, respectively. The Appeals Board is now called upon to determine how these orders affect the relative liability of Cache Valley, Weslo and the ERF for Mr. Wood's medical expenses incurred since January 10, 1991, the date of his accident at Weslo. This question can be answered by reference to the provisions of the three orders, as follows:

- The 1984 order divided liability for Mr. Wood's 1980 back injury equally between Cache Valley and the ERF;
- The 1991 order equally divided liability for the medical treatment Mr. Wood received after the 1990 accident equally between Weslo and Cache Valley;
- The 2004 order, based on the stipulation of all the parties, required Cache Valley, Weslo and ERF to continue paying Mr. Wood's medical expenses according to the terms of **both** the 1984 and 1991 orders.

In considering the effect of these orders, the Appeals Board notes that, whatever specific

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objections or defenses any of the respondents might have had to the orders issued in 1984 and 1991, such objections or defenses became moot when each of the respondents agreed to the terms of the 2004 order. That agreement and order specifically provided that “medical expenses which are related to the industrial accidents will be paid by Respondents in accordance with the attached Exhibits.” (Referencing the 1984 and 1991 orders.) Thus, in 2004, the parties’ agreement and Judge La Jeunesse’s order explicitly ratified the obligations imposed on Cache Valley, Weslo and ERF by the 1984 **and** 1991 orders.

Applying those two orders to the current circumstances, the Appeals Board begins with the 1984 order. That order defined Cache Valley and the ERF’s respective liabilities for Mr. Wood’s 1984 injury and required ERF to reimburse Cache Valley for one-half of any medical expenses paid by Cache Valley for that injury. Then, with the 1984 order already in place, the 1991 order addressed the situation that arose when Mr. Wood experienced another back injury at Weslo. The 1991 order treats Mr. Wood’s need for continuing medical treatment as attributable equally to both the Cache Valley injury and the Weslo injury. Accordingly, each insurance carrier agreed to pay half the expense of this ongoing treatment.

In reconciling the terms of the 1984 and 1991 orders, the Appeals Board concludes that until the 1991 order was entered, Cache Valley and ERF equally shared liability for Mr. Wood’s medical care. Assuming that Cache Valley has made a proper accounting to establish the amount of such shared liability, Cache Valley is entitled to reimbursement from ERF for half the amount it has paid for medical expenses actually incurred during this period. Then, pursuant to the 1991 order, Weslo became liable for one-half of the expense of Mr. Wood’s medical treatment after the 1990 accident, with Cache Valley and ERF equally liable for the remaining one-half of that expense. In summary, Weslo is liable for 50% of Mr. Wood’s medical expenses after January 10, 1990, and Cache Valley and ERF are liable for 25% each.

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**ORDER**

In light of the foregoing, the Appeals Board sets aside Judge La Jeunesse's decision of August 8, 2005, and hereby orders ERF to reimburse Cache Valley for one half of the net amount Cache Valley pays for medical care of Mr. Wood's injuries since January 10, 1990, after Cache Valley has deducted the 50% contribution due from Weslo. It is so ordered.

Dated this 27<sup>th</sup> day of May, 2008.

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.